



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CYRUSONE, LLC
FOR THE
CYRUSONE LOUDOUN TECH CENTER
Registration No. 74086**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and CyrusOne, LLC regarding the CyrusOne Loudoun Tech Center, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "CyrusOne" means CyrusOne, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. CyrusOne, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the CyrusOne Loudoun Tech Center, located at 21111 Ridgetop Circle, Sterling, Virginia 74086 (Loudoun County).
7. "FCE" means a full compliance evaluation by DEQ staff.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. CyrusOne owns and operates the Facility in Loudoun County, Virginia. The Facility is a partially constructed data center and considered a 'new stationary source', as defined in 9 VAC 5-80-1110.C.
2. On April 17, 2015, Department staff conducted a FCE at the Facility, and of the Facility record, for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
 - a. CyrusOne has constructed 5 diesel engine-generator sets including: four 2.25 MW generators and one 1,000 kW generator. The aggregate rated electrical power output of the electrical generators powered by the diesel engines is 10,000 kW which is greater than the permit exempt threshold of 1125 kW provided for in 9 VAC 5-80-1105.B.2.b. Additionally, the uncontrolled emission rate for nitrogen oxides (as NO₂) from the five installed units combined, is estimated to exceed the permit exemption threshold of 40 tons per year for NO₂, provided in 9 VAC 5-80-1105.C.1 for new stationary sources. No State Air Pollution Control Board permit under 9 VAC 5-80-1100, *et seq.* had been issued as of the date of the FCE.

- b. The five diesel engine-generator sets were commissioned in September and October of 2014 and, no State Air Pollution Control Board permit under 9 VAC 5-80-1100, *et seq.* had been issued.
 - c. The Facility failed to provide DEQ with any notice of construction, notice of anticipated start up, or notice of actual start up regarding the five diesel engine generator sets.
3. 9 VAC 5-80-1120 (A) requires that “[n]o owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article.”
4. 9 VAC 5-50-50 (A) requires that “[a]ny owner of a new or modified source subject to the provisions of this chapter shall provide written notification to the board of the following:
 1. The date of commencement of construction, relocation, or modification of a new or modified source postmarked no later than 30 days after such date.
 2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date.
 3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date.”
5. On May 6, 2015, based on the evaluation and follow-up information, the Department issued Notice of Violation to CyrusOne for the violations described in paragraph C(2), above.
6. On June 3, 2015, CyrusOne submitted a formal written response to the NOV. The response stated that CyrusOne is currently working on an air permit application.
7. On June 17, 2015, CyrusOne submitted an Air Permit Application to DEQ.
8. Based on the results of the April 17, 2015 evaluation and the documentation submitted by CyrusOne, the Board concludes that CyrusOne has violated 9 VAC 5-50-50 (A) and 9 VAC 5-80-1120 (A), as described in paragraph C(2), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders CyrusOne, LLC agrees to pay a civil charge of \$24,185.20 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104

Richmond, Virginia 23218

CyrusOne, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, CyrusOne, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CyrusOne for good cause shown by CyrusOne, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated May 6, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, CyrusOne admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CyrusOne consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CyrusOne declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CyrusOne to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. CyrusOne shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. CyrusOne shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CyrusOne shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CyrusOne. Nevertheless, CyrusOne agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after CyrusOne has completed all of the requirements of the Order;
 - b. CyrusOne petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CyrusOne.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CyrusOne from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by CyrusOne and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CyrusOne certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CyrusOne to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CyrusOne.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, CyrusOne voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of December, 2015.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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CyrusOne, LLC voluntarily agrees to the issuance of this Order.

Date: 11-19-15 By: [Signature], Vice President
(Person) (Title)
CyrusOne, LLC

Commonwealth of Virginia
City/County of Loudon

The foregoing document was signed and acknowledged before me this 19th day of
November, 2015, by Laramie Dorris who is
Vice President of CyrusOne, LLC, on behalf of the company.

Cheryl Gibson
Notary Public

1147654
Registration No.

My commission expires: January 4, 2019

Notary seal:

